U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31301362

Date: JUNE 5, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a data scientist who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did she demonstrate that she warranted approval in a final merits determination. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a

one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

After earning a Master of Science in Computer Science, the Petitioner briefly worked as a data scientist before founding an information technology company in the United States.

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Director, the Petitioner claimed she met three of the regulatory criteria. The Director decided that the Petitioner satisfied three of the criteria relating to published material, judging, and authorship of scholarly articles, but that she had not demonstrated sustained national or international acclaim and that she was among the small percentage at the very top of the field of endeavor in a final merits determination. On appeal, the Petitioner maintains that she satisfied such a showing in the final merits determination. After reviewing all the evidence in the record, we conclude that she has not met at least three of the regulatory criteria and we withdraw the Director's determination to the contrary.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

This criterion contains multiple evidentiary elements the Petitioner must satisfy through the submission of evidence. The first element is that the Petitioner is an author of scholarly articles in her field in which she intends to engage once admitted to the United States as a lawful permanent resident. We consider these articles to fall within two distinct areas.

One relative area is within the academic arena in which a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article. The next area lies outside of the academic arena in which a scholarly article should be written for learned persons in that field. "Learned" is defined as "having or demonstrating profound knowledge or scholarship." Learned persons include all persons having profound knowledge of a field. *See generally* 6 *USCIS Policy Manual* B.1, https://www.uscis.gov/policymanual.

The second evidentiary element this criterion requires is that the scholarly articles appear in one of the following: (1) a professional publication, (2) a major trade publication, or (3) in a form of major media. Relevant factors a petitioner should demonstrate include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership are high relative to similar publications (for major trade publications and other major media). *See generally* 6 *USCIS Policy Manual*, *supra*, at B.1. The Petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

Within the initial filing, the Petitioner claimed she published articles on Bitsight's blog, which was a major trade publication. As data to compare with Bitsight's website traffic the Petitioner offered samples from other websites she selected, but she did not offer a ranking of Bitsight's traffic compared to other trade publication websites. She also submitted evidence relating to the Towards Data Science website. For various reasons, the Director's request for evidence (RFE) notified the Petitioner that her initial submission did not meet this criterion's requirements.

Responding to the RFE, the Petitioner provided additional materials relating to Bitsight and from Towards Data Science in the form of additional articles she authored and she incorporated data for these webistes she obtained from SiteWorth Traffic. This is a resource that offers "a free service designed to estimate value, daily pageviews, daily visitors and daily revenue of a website." *CALCULATE WEBSITE WORTH*, $ITEWORTHTRAFFIC, https://www.siteworthtraffic.com/.

The Director subsequently granted the criterion without providing any analysis to offer insight into their reasoning. We also note that the Petitioner filed a subsequent petition under this same immigration classification that the Director denied. Within that decision, the Director concluded the Petitioner did not satisfy this criterion based on the very similar claims and evidence that she offered with this petition.

First, the evidence the Petitioner provided consisted of screenshots purporting to be from SiteWorth Traffic and pasted those images into her RFE response letter rather than submitting actual evidentiary printouts from the website. Second, while the Petitioner provided other website traffic in which to compare to her submitted evidence, she selected those websites instead of offering a ranking of major trade publications in her field which would be a more apt comparison. By the Petitioner selecting the websites in which to compare to the sites where she published articles, she may have omitted any sites with a higher rate of views than the results from the two publications where she published. Ultimately, this leaves us unable to properly compare the evidence with other similar sources. Each of these shortcomings diminish the evidentiary value of the materials the Petitioner submitted for the record.

Additionally, the SiteWorth Traffic website does not generate high confidence in the data its website produces for our purposes. In their frequently asked questions, they indicate the following:

> Can I consider your estimations to be 100% accurate?
>
> No, even if we do our best to make sure the estimated information about a website, such as the website worth and daily visitors, are accurate, we can not [sic] guarantee

> that these information are 100% accurate. We believe that they are very close to the real ones.
>
> How do you generate the website worth and the other data?
>
> We use custom algorithms that are updated frequently, we take care of the backlinks present in search engines of the Alexa statistics, of the Google Page Rank, and of a lot of other factors to generate the estimations about the traffic of a website.

FREQUENTLY ASKED QUESTIONS, $ITEWORTHTRAFFIC, https://www.siteworthtraffic.com/faqs. Especially troubling is that the SiteWorth Traffic website reflects it currently relies on Alexa statistics; a service that has been defunct since 2022. *How AWS Data Exchange can help with the End of Life of Alexa Web Information Service*, AWS (Nov. 3, 2022), https://aws.amazon.com/data-exchange/resources/end-of-life-of-alexa-web-information-service/. In addition to some of SiteWorth Traffic's methods no longer existing, this is not a resource that offers sufficient detail into how they calculate their estimates; estimates that they cannot even guarantee are fully accurate. The Petitioner has not explained why we, or the Director, should allow her to rely on outdated and apparently unreliable evidence, as she filed her petition in 2023 after the site was no longer in service. In the end, the Petitioner offered inadequate evidence to support her claims that she published scholarly articles in her field in professional or major trade publications or other major media.

Accordingly, we conclude the Director should not have decided the authorship of scholarly articles criterion in the Petitioner's favor and we withdraw their determination as it relates to this requirement.

Because we are withdrawing the Director's determination under this criterion, the result is that the Petitioner has only satisfied two regulatory criteria, when the regulation requires she meet at least three. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20 that the Director performed. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown the significance of their work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.